Supreme Court, U.S.
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Supreme Court of the United States

OCTOBER TERM, 1970

No. 585

COOPER AGENCY, PETITIONER,

versus

UNITED STATES OF AMERICA, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITIONER'S SUPPLEMENTAL BRIEF

HENRY H. EDENS,
1219 Main Street,
Columbia, South Carolina,
29201,
Counsel for Petitioner.

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PETITIONER'S SUPPLEMENTAL BRIEF

Now, as of October 5, 1970, all facts stated in the petition (Pet. 3, 4) and material to the question presented (Pet. 2) are deemed admitted by the Government.

Pursuant to notice of motion in district court, under Rule 60(b) of the Federal Rules of Civil Procedure, the petitioner filed a request for admissions, as stated in Petitioner's Reply and Supplemental Brief, and a second request for admissions which is printed below. The Government has filed no response to either request, and all of the facts stated therein are deemed admitted under Rule 36 of the Federal Rules of Civil Procedure.

PLAINTIFF'S REQUEST FOR ADMISSIONS BY DEFENDANT

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, the plaintiff hereby requests the defendant, within ten days after service hereof, to admit each of the facts stated below and shown to be true by official records of the Internal Revenue Service.

1. The Commissioner of Internal Revenue determined that the plaintiff, under Section 6901 of the Internal Revenue Code, was liable as a transferee of assets having total value of $463,118.55; these were the only assets determined at any time by the Commissioner to have been received by the plaintiff as transferee.

2. The Commissioner notified the plaintiff that jeopardy assessments were made for the total amount determined to be due by it, and the only jeopardy assessments made at any time against this plaintiff were in the total amount of $463,118.55, plus interest as provided by law.

3. The Commissioner stated in his legal notices to the plaintiff that "inasmuch as the value of assets received by you amounted to $2,340.00 and $460,778.55, your liability as a transferee is limited to $463,118.55, plus interest as provided by law."

4. Internal revenue agents seized the plaintiff's assets and demanded immediate payment of $1,412,522.58, plus interest, from the plaintiff as transferee. This demand wrongfully included the amount of $949,404.03, plus interest, representing transferor liabilities in excess of the value of transferred assets, for which the plaintiff in this case was never determined to be liable as transferee or otherwise.

5. The plaintiff's assets were held under Federal lien, levy, seizure, and threat of public advertisement and sale, until the plaintiff, as transferee, had paid the total amount

of $1,192,405.43. The Internal Revenue Service agreed in writing to apply, and did in fact apply, the total amount of $1,192,405.43 to the account of the plaintiff as transferee; and, as stipulated in writing, no part of said amount paid by the plaintiff was "involved in the settlement of other taxpayers' obligations for which it was not liable as transferee."

CHARLES F. COOPER,
Attorney for Plaintiff.

September 22, 1970

CONCLUSION

Based on admitted facts, and for the reasons stated in the petition, this Court is respectfully urged to grant certiorari in this case; and, in the light of Government admissions, the petitioner respectfully suggests that summary reversal is now in order.

Respectfully submitted,

HENRY H. EDENS,
1219 Main Street,
Columbia, South Carolina
29201,
Counsel for Petitioner.

October 8, 1970.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October, 1970, three copies of Petitioner's Supplemental Brief were mailed, postage prepaid, to each of the following: Erwin N. Griswold, Esquire, Solicitor General, Department of Justice, Washington, D. C. 20530, and Johnnie N. Walters, Esquire, Assistant Attorney General, Tax Division, United States Department of Justice, Washington, D. C. 20530. I further certify that all parties required to be served have been served.

/s/ HENRY H. EDENS,
1219 Main Street,
Columbia, South Carolina,
29201,
Counsel for Petitioner.